would be the easiest thing in the world to name them. There was nothing illegal about these loans, unless NYL knows something about them or the conditions affecting them which he did not want the court to know of. Who would grant him these substantial loans without some form of written acknowledgment or security? No document was produced to substantiate these loans. One would have expected NYL to have offered to pledge the shares as security for these loans.

It should also be recalled that NYL alleged that NYC asked for payment first before instructing Lee to draw up the documents. Why NYC would want to do something like that has also not been explained. In view of NYC's character, I find his behaviour, if true, aberrant or irrational. But I do not believe this to be the truth. All the credible evidence showed that there could not have been a sale even though the plaintiffs have not been able to explain how the signature of NYC got onto DB54 and the transfer. Save for that omission which, in my view, should be considered merely as an inability to produce the necessary evidence to prove forgery, all the other evidence was consistent with a situation where NYL, with full knowledge of the financial and business condition of the company, decided to take steps to obtain a transfer of the shares, when he realized that NYC was dying. He was in a position to do that because apart from NBK, no one would be able to read any of the documents that NYC or the other directors would be asked to sign so long as they were told that they concerned the company. In my view, NYL's intention to acquire NYC's shares by stealth is consistent with the manner in which the acquisition was carried out. DB54, the transfer and the new share certificate were prepared and executed on the quiet and only NYL and Lee were aware of their significance. On the evidence as a whole, it is my view that the probability of NYC not knowing the nature of the document he was signing, viz the transfer, is much higher than the probability of his having been aware of it.

It is necessary to bear in mind that the case for NYL is not merely that there was a sale but that he had paid for the shares in cash. His case is not that there was a sale but that he had not paid for the shares. These two strands in his case are intertwined and cannot be separated. They hold or break together. If I do not believe one part of the story, I am well entitled to conclude that the other part is also false. On the evidence, I have no doubt that NYL never paid for the shares for the reasons I have already given. Accordingly, I also find as a fact that there was never any sale of the shares by NYC to the knowledge of NYC.

For the above reasons, the plaintiffs succeed in their claim. There will be a declaration that the shares are held by NYL for the estate of NYC by way of resulting or constructive trust and an order that (1) the proceeds of realization of the shares be paid to the plaintiffs; and (2) that the first defendant account to the plaintiffs all profits which he has derived from the wrongful ownership of the shares. The first defendant will pay the costs of the plaintiffs in this action.

Plaintiffs' claim allowed.

Solicitors: *G Murugaiyan; Tan Rajah & Cheah; PC Tock & Co; Goh Soon Hock & Co.*

Reported by *Terence Tan Bian Chye*

Arif v Yeo & Anor

HIGH COURT (SINGAPORE) — SUIT NO 1199 OF 1985
COOMARASWAMY J
25 AUGUST 1989

Partnership — Allegations of mismanagement — Issue of which partner should run partnership pending trial — Interim order — Dissolution of partnership — Effective date of dissolution — Whether date of service or date of filing — Civil Law Act (Cap 43, 1985 Ed), s 5(1) — Partnership Act 1890 [UK], s 32(c) — Partnership Act 1908 [NZ], s 35

Civil Procedure — Interim orders — Issue of which partner should run business pending trial — Undertaking of damages by one partner — No evidence of inability to honour undertaking — Damage to partner if not allowed to run business — Damages not an adequate remedy

This action concerned a partnership. The original partners were the plaintiff and two persons other than the two defendants. The other two withdrew from the firm at different times and the first defendant came in as a partner with the plaintiff. However, she made no effort to have her name recorded with the landlord as a co-tenant or a joint tenant. Her brother, the second defendant, was not a partner but was the alleged 'financier' of the business providing capital for two major aspects of the firm's business. The second defendant went to the shop and forced the plaintiff to move out, alleging his mismanagement of the partnership business. Each in effect applied to keep the other side out of the shop and for the running of the business there to be given to it.

Held, granting the plaintiff's application to continue operating the partnership business from the partnership premises until trial:

(1) It is plain that until the second defendant ordered the plaintiff out of the shop, he (the plaintiff) was constituted the managing partner with the consent of the first defendant, and so far as it matters, of the second defendant.

(2) As regards their rights inter se, it is clear that where, however, the partner complained of has by agreement been constituted the active managing partner, the court will not interfere unless a strong case is made against him.

(3) On the affidavit evidence, the defendants' allegations of mismanagement have, on the evidence before the court, been fully answered; and they do not justify the second defendant's actions in expelling the plaintiff from the shop nor the intervention of the court.

(4) An applicant for an injunction must show that there is a serious question to be tried, that damages are inadequate and if necessary, that the balance of convenience is in his favour.

(5) It is the second requirement that calls for closer examination. The defendants are hard put to show that damages are not adequate. Full inventories were taken on the relevant dates so that the financial position as at those dates is ascertained. Furthermore, the pre-existing arrangement between the parties allowed the defendants to closely monitor the plaintiff's activities which rendered the second defendant's request for accounts when they were not due a fruitless exercise.

(6) The plaintiff has given an undertaking to pay such damages which may be suffered by the defendants should the plaintiff's claim fail. There is no suggestion that he is not able to honour his undertaking.

(7) The plaintiff was the person who started the business and managed it based on his knowledge, particularly of the money-changing business and on his contacts within necessary business circles. It is germane that when the plaintiff was excluded from management, the trade creditors were pressing him, and not the defendants or either of them, for payment.

(8) Damages would not be an adequate remedy to compensate the plaintiff for the loss of credibility, creditworthiness and standing in business circles which he would suffer if he were excluded from management at this stage.

(9) As regards the tenancy of the partnership business, the defendants have displayed a lackadaisical attitude. They have not paid the rent for the period when they were in possession of the premises and business. The plaintiff however is, as is patent and clear, the sole legal tenant and is prepared personally to shoulder all the responsibilities in connection with the tenancy.

(10) Hence, the plaintiff would be the best person to continue a business in the former premises of the partnership pending trial. The plaintiff and two others were tenants of 80 Marine Parade Road #01-14. As far as the landlord is concerned, the plaintiff is the sole tenant.

(11) The partnership was for an undefined time, ie a partnership at will. By s 5(1) of the Civil Law Act (Cap 43, 1985 Ed), the law applicable in Singapore with respect to partnership is English law.

(12) Giving effect to s 32(c) of the UK Partnership Act 1890, which provides that a partnership at will is dissolved 'by the partner giving notice to the other or others of his intention to dissolve the partnership', the effective date of dissolution was the date of service (not the filing) of the writ on the defendant.

(13) The affidavit of the plaintiff's solicitors' clerk who served the writ specifies the date on which it was served on each of the two defendants. Accordingly, that date is the effective date of the dissolution.

(14) With the partnership effectively dissolved with service of the writ on the first defendant and with the plaintiff being the sole tenant of the premises where the partnership business was previously carried on, the plaintiff and he alone has the right to carry on the permitted business on the premises. The first defendant and the second defendant have no right even of entry onto the premises without leave of the plaintiff.

(15) The court thus made orders which, until trial of action, enabled the plaintiff to reopen the premises at shop #01-14 and gave him liberty to continue or commence business there.

Cases referred to

1 *Automatic Self-Cleansing Filter Syndicate Co Ltd* v *Cuninghame* [1906] 2 Ch 34 (refd)
2 *Kirby* v *Carr* (1838) 3 Y & C Ex 184; 160 ER 666 (follid)
3 *Shepherd* v *Allen* (1864) 33 Beav 577; 55 ER 492 (refd)
4 *Unsworth* v *Jordon* [1896] WN 2 (follid)
5 *Phillips* v *Melville* [1921] NZLR 571 (follid)
6 *Harris* v *Burgess & Thorne* [1937] 4 DLR 219 (follid)

Legislation referred to

Civil Law Act (Cap 43, 1985 Ed) s 5(1)
Partnership Act 1890 [UK] s 32(c)
Partnership Act 1908 [NZ] s 35

G Murugaiyan and *G Perumal* for the plaintiff.
Ng Wing Cheong, *TV Sukumar* and *Low Lih Jeng (Miss)* for the defendants.

Coomaraswamy J: This action concerned a partnership called 'Crescent Commercials' which carried on business at 80 Marine Parade Road #01-14, Parkway Parade, Singapore 1544. The original partners were the plaintiff and two persons other than the two defendants. The tenancy of the shop #10-14 was in the names of the three of them, 'trading under the name of Crescent Commercials'. The other two withdrew from the firm at different times and the first defendant came in as a partner with the plaintiff. However, she made no effort to have her name recorded with the landlord as a co-tenant or a joint tenant. Her brother, the second defendant, was not a partner but was the alleged 'financier' of the business providing capital for two major aspects of the firm's business. On the evidence available before me, he also appeared to look after his sister's interest in the firm, though at no time was he formally constituted her agent.

The second defendant went to the shop and forced the plaintiff to move out, alleging his mismanagement of the partnership business. The plaintiff was told by the second defendant that the second defendant's wife was to take over charge of the business. This led to the issue of a writ by the plaintiff in which he claimed, inter alia, dissolution of the partnership. This was followed by a series of ex parte applications by each side. Each in effect applied to keep the other side out of the shop and for the running of the business there to be given to it.

After the inter partes hearing for the continuance of the interim injunctions obtained by each party and the discharge of those obtained by the adversary, I made orders which, until trial of action, (and put in a nutshell) enabled the plaintiff to reopen the premises at shop #01-14 and gave him liberty to continue or commence business there; and I discharged the interim injunctions granted to the defendants.

Insofar as this partnership is concerned, there was no claim by either side of a written partnership agreement defining each partner's duties and rights. Yet, it is plain that until the second defendant ordered the plaintiff out of

the shop, he (the plaintiff) was constituted the managing partner with the consent of the first defendant, and so far as it matters, of the second defendant. As regards their rights inter se, there is a particularly apposite passage from *Lindley on Partnership* (15th Ed) p 656:

> *Injunction in case of misconduct*
>
> ..., it is necessary to make a few observations on the kind of misconduct which will induce the court to grant an injunction against one partner at the suit of another. Mere squabbles and improprieties, arising from infirmities of temper, are not considered sufficient ground for an injunction; ... *Where, however, the partner complained of has by agreement been constituted the active managing partner, the court will not interfere unless a strong case be made out against him.* (Emphasis added.)

Further, in the case of *Automatic Self-Cleansing Filter Syndicate Co Ltd* v *Cuninghame*,[1] Cozens-Hardly LJ, at p 44, had the opportunity to approve the above passage, albeit in obiter dicta:

> Take the case of an ordinary partnership. If in an ordinary partnership there is a stipulation in the partnership deed that the partnership business shall be managed by one of the partners, it would be plain that in the absence of misconduct, or in the absence of circumstances involving the total dissolution of the partnership, the majority of the partners would have no right to apply to the court to restrain him or to interfere with the management of the partnership business. I would refer to what is said in *Lindley on Partnership* (7th Ed) p 574: 'Where, however, the partner complained of has by agreement been constituted the active managing partner, the court will not interfere with him unless a strong case be made out against him' — that is to say, unless there is some case of fraud or misconduct to justify the interference of the court.

The arrangement between the plaintiff on the one hand and the defendants on the other appears to be a sensible commercial agreement arrived at between the plaintiff and the second defendant, two commercial persons well versed in business matters. Hence, the court ought to be perfectly sure that the conduct of the plaintiff has been such as to make it proper, having regard to the interests of others as well as himself, that he should be removed from the situation in which their contract placed him. This should especially be so in an interlocutory application.

On the affidavit evidence, the defendants' allegations of mismanagement have, on the evidence before me, been fully answered; and they do not justify the second defendant's actions in expelling the plaintiff from the shop nor the intervention of the court.

I will look at this matter in another way. An applicant for an injunction must show that there is a serious question to be tried, that damages are inadequate and if necessary, that the balance of convenience is in his favour.

It is the second requirement that calls for closer examination. The defendants are hard put to show that damages are not adequate. Full inventories were taken on the relevant dates so that the financial position as at those dates is ascertained. Furthermore, the pre-existing arrangement between the parties allowed the defendants to monitor closely the plaintiff's activities which rendered the second defendant's request for accounts when they were not due a fruitless exercise. The plaintiff has given an undertaking to pay such damages which may be suffered by the defendants should the plaintiff's claim fail. There is no suggestion that he is not able to honour his undertaking.

As for the plaintiff, he has been managing the partnership for more than 15 months without complaint. It was he who started the business and managed it based on his knowledge, particularly of the money-changing business and on his contacts within necessary business circles. Most of the goods in the sundry goods business were secured on terms of credit from creditors known to the plaintiff personally. It is germane that when the plaintiff was excluded from management, the trade creditors were pressing him, and not the defendants or either of them, for payment. It was his knowledge of the partnership and his concern for its business interests that enabled the court to order the return of the sundry goods (including perishable goods) to the creditors, so that third party rights are not prejudiced by this dispute.

Damages would not be an adequate remedy to compensate the plaintiff for the loss of credibility, creditworthiness and standing in business circles which he would suffer if he were excluded from management at this stage.

The defendants, on the other hand, showed no concern for the interests of the partnership and its standing vis-a-vis the trade creditors. This is presumably because the creditors are not the defendants' 'contacts'.

Moreover, as regards the tenancy of the partnership business, the defendants have displayed a lackadaisical attitude. They have not paid the rent for the period when they were in possession of the premises and business. And they were quite prepared to give up possession of the premises as evidenced in the defendants' management consultant's letter.

The plaintiff however is, as is patent and clear, the sole legal tenant and is prepared personally to shoulder all the responsibilities in connection with the tenancy. Hence, the plaintiff would be the best person to continue a business in the former premises of the partnership pending trial.

While it is not necessary to consider the balance of convenience having regard to my view that damages are not an adequate remedy to compensate the plaintiff, I would add that even this consideration comes down in his favour. The reasons are the same: the plaintiff has all along been the managing partner, his personal tenancy (not that of the partnership) is still running, traders have dealt with him and, the defendants have not displayed any enthusi-

asm for managing the firm until the final resolution of this dispute at trial.

There is yet another and simpler way of looking at the facts in this case. The plaintiff and two others were tenants of 80 Marine Parade Road #01-14. All three were partners in Crescent Commercials when the tenancy agreement was entered into with them in their three names 'trading under the name of Crescent Commercials'. The other two withdrew from the firm and, of the named tenants, only the plaintiff remained at the times material to the issues before me. Neither defendant was made a co-tenant or a joint tenant. The first defendant's 'management consultant', How Yew Wen, on her instructions and as her agent, wrote to the plaintiff a letter in which he refers to the premises as 'your said business premises'. More importantly, as far as the landlord is concerned, the plaintiff is the sole tenant. The landlord's solicitors wrote to him in his sole name concerning the tenancy. Accordingly, in fact, by admission of the first defendant and by recognition of the landlord, the plaintiff is the sole tenant of the premises in question.

The partnership was not one for a fixed term or for a specified adventure or undertaking. It was for an undefined time, ie a partnership at will.

By s 5(1) of the Civil Law Act (Cap 43, 1985 Ed), the law applicable in Singapore with respect to partnership is English law. Prior to the UK Partnership Act 1890, there were two decisions which held that the mere *institution* [emphasis added] of a suit praying for dissolution of a partnership dissolved a partnership. The cases are *Kirby* v *Carr*[2] and *Shepherd* v *Allen*.[3] In both cases it was held that the mere filing of a bill (or writ) for dissolution of a partnership was effective to dissolve the partnership from the date of such filing.

After the enactment of the Partnership Act 1890, the same question came before the court in *Unsworth* v *Jordan*[4] and North J held that the effective date of dissolution was the *date of service* (not the filing) [emphasis added] of the writ on the defendant. In doing this, he was no doubt giving effect to s 32(c) of the Act which provides that a partnership at will is dissolved 'by the partner giving notice to the other or others of his intention to dissolve the partnership' and that if no date of dissolution is mentioned, the dissolution takes place 'as from the date of the communication of the notice'.

Section 32 of the Partnership Act 1890 is re-enacted in New Zealand as s 35 of that country's Partnership Act. On the effect on a partnership of a writ seeking dissolution, Cooper J in *Phillips* v *Melville*[5] reached the same conclusion as North J and held that the date of service of a writ claiming dissolution of a partnership was the effective date of the dissolution. In doing so, Cooper J analysed the authorities and the relevant provisions of the Partnership Act [NZ].

The point came up in Canada before the Appellate Division of the New Brunswick Supreme Court in *Harris* v *Burgess & Thorne*.[6] It is significant to note that neither *Unsworth* v *Jordan*[4] nor *Phillip* v *Melville*[5] were cited in *Harris* v *Burgess & Thorne*[6] but the New Brunswick Supreme Court reached the same conclusion.

In this action, the first prayer in the plaintiff's statement of claim which was indorsed on the writ is a prayer for dissolution of the partnership. The affidavit of the plaintiff's solicitors' clerk who served the writ specifies the date on which it was served on each of the two defendants. This evidence is unchallenged. Accordingly, that date is the effective date of the dissolution. There is therefore nothing between the former partners from that date other than accounts.

With the partnership effectively dissolved with service of the writ on the first defendant and with the plaintiff being sole tenant of the premises where the partnership business was previously carried on, the plaintiff and he alone has the right to carry on any permitted business on the premises. The first defendant and the second defendant have no right, even of entry onto the premises without leave of the plaintiff.

The reasoning following the effective dissolution of the partnership with service of a writ claiming dissolution alone will justify the various orders that I made.

Order accordingly.

Solicitors: *G Murugaiyan*; *Sukumar & Teo.*

Reported by *Terence Tan Bian Chye*